STATE OF MICHIGAN

COURT OF APPEALS

KEWEENAW COUNTY ROAD COMMISSION,

Plaintiff-Appellant,

v

PHILLUP BRINKMAN,

Defendant-Appellee.

UNPUBLISHED
August 2, 2002

No. 230832
Keweenaw Circuit Court
LC No. 98-000356-CH

Before: Griffin, P.J., and Hood and Sawyer, JJ.

PER CURIAM.

Plaintiff appeals as of right a judgment entered following a nonjury trial. We affirm.

Plaintiff brought this action alleging that defendant illegally blocked the Leskinen Farm Road, land-locking other property. At trial, plaintiff presented evidence indicating that a quarter mile road was accepted into the county road system in the 1930s, and was included in the certification maps throughout the 1940s. However, defendant testified and the trial court found that defendant's family had occupied their property for about forty years, and the road was never used for public travel during that time. A two-track trail was present when his father bought the property, and it was continuously cabled off since that time.

The trial court determined that Leskinen Farm Road became a public roadway under the highway by user concept and the road was neither abandoned nor decertified. However, the court also found that defendant and his family had regained full control of the land by principles of adverse possession. Accordingly, the trial court entered judgment for defendant.

On appeal, plaintiff relies on MCL 600.5821(2) as the basis for its argument that the trial court erred in applying adverse possession principles against plaintiff. We disagree.

The requisite period for establishing adverse possession depends on the applicable limitations period set forth by statute in actions to recover land. Generally, the limitations period for the recovery or possession of land is fifteen years. MCL 600.5801(4); *Gorte v Dep't of Transportation*, 202 Mich App 161, 165; 507 NW2d 797 (1993). If the other elements of adverse possession have been established, the rights of the party who has not asserted its rights ends at the expiration of the limitations period, and title is vested in the party claiming adverse

possession. *Id*. at 168. If there is no limitations period for an entity to bring an action to recover land, then it logically follows that the entity may not lose its rights to land by adverse possession.

MCL 600.5821 contains specific provisions addressing periods of limitation applicable to the state for recovery of land and "municipal corporations" for recovery of public highways. MCL 600.5821 states, in part:

> (1) Actions for the recovery of any land where the state is a party are not subject to the periods of limitations, or laches. However, a person who could have asserted claim to title by adverse possession for more than 15 years is entitled to seek any other equitable relief in an action to determine title to the land.
>
> (2) Actions brought by any municipal corporations for the recovery of the possession of any public highway, street, alley, or any other public ground are not subject to the periods of limitations.

Plaintiff asserts that subsection (2) applies to plaintiff. However, it does not explain why this subsection, referring to "municipal corporations," should apply to plaintiff, a county road commission. The two are different entities. In another context, the Supreme Court recognized that there are similarities in the two, but stated, "A board of county road commissioners is not a municipal corporation . . . ." *Oakland Co Bd of Co Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 609; 575 NW2d 751(1998). By its express terms, the statute on which plaintiff relies does not apply to plaintiff. See also *Rochow v Spring Arbor Twp*, 152 Mich App 773, 778-779; 394 NW2d 102 (1986).

Because the statute is not applicable to plaintiff, we apply the equitable principles that underlie the equitable remedy of adverse possession. In this regard, we note that although the procedural distinctions between law and equity no longer exist, "it is still true that most of the rules of equity are characterized by a greater flexibility than those of the common law, and that courts possess greater discretion in administering equitable remedies than even the same courts have in administering common-law remedies." McClintock, Equity (2d ed), p 2. In this regard, "[e]quity is said to be flexible rather than rigid, its interest justice rather than law." Dobbs, Law of Remedies (2d ed), § 2.1(3), p 55. Further, "[e]quity looks at the whole situation and grants or withholds relief as good conscience dictates." *Thill v Danna*, 240 Mich 595, 597; 216 NW 406 (1927).

In the present case, equity clearly favors defendant Brinkman over plaintiff road commission. Mr. Brinkman and his immediate family and before that his father and mother have lived in a home for approximately forty years that was built on the foundation of the old Allouez Township School. Plaintiff road commission now claims that the access to defendant's home is within its impliedly dedicated roadway. If a roadway was dedicated by implication, defendant ceased maintaining the road over forty years ago. In this regard, the trial judge made the following findings of fact:

> Phillup Brinkman, the Defendant, testified that his family has occupied the home in which he now lives for about forty years that he grew up in the home. It

was occupied by his parents until his father died in 1985. According to Defendant, there was never in his memory any roadway used by the public, or maintained by the Keweenaw County Road Commission, in the location where the Leskinen Farm Road is claimed to be. In fact, Defendant testified that he, and his father before him, maintained a cable across the area claimed to be a road to prevent access, piled rocks and wood in the area and continuously posted no trespassing signs on what is claimed to be the roadway.

* * *

During the trial the Court, accompanied by counsel, visited the site of claimed road. Various items of the Brinkman's personal property were on what would be the Leskinen Farm Road if it continued to exist. Those items included a large propane gas tank, a swimming pool, and various small pieces of property. There were numerous rock piles as well as gardens located on what would be the roadway and as one looked eastward, the claimed roadbed was covered with brush, dead falls, saplings and small trees which would prevent anything less powerful than a small bulldozer from traveling eastward along the claimed roadway from Five Mile Point Road.

* * *

The evidence presented persuades this Court that although the Leskinen Farm Road became a public roadway by reason of the Highway by User concept its public roadway status has terminated. That is because Mr. Brinkman and his predecessors in title, for an uninterrupted period in excess of fifteen years, beginning around 1960, took affirmative action which was open, notorious, hostile and adverse to the rights of the public with respect to the claimed roadway right of way. That affirmative action included posting no trespassing signs, turning away members of the public, placing a cable across the alleged roadway, piling wood on the alleged roadway, placing rock piles across the claimed road, maintaining gardens on it, placing various items of semi-permanent personal property on it and regularly using it as a parking and storage area.

* * *

For all of the above reasons, the relief requested in Plaintiff's Complaint is denied.

We agree with the trial court and hold that its findings of fact are not clearly erroneous. MCR 2.613(C). In the present case, the flexible rules of equity apply. Further, after examining the "whole situation," we conclude that "good conscience" and the "interest of justice," *supra*, dictate that the lower court's fair and just decision be affirmed. See *Sparks v Sparks*, 440 Mich 141, 146-147, 150-152; 485 NW2d 893 (1992). ("In equity cases it is not enough for the trial court to have acted in a nonarbitrary manner; it must also reach a disposition that is fair and just." *Id.* at 150.)

Affirmed.

/s/ Richard Allen Griffin
/s/ Harold Hood